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Court	CA E.D. Cal.; 9th Cir.
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March 17, 2010

Via certified mail / Return receipt requested

Lisa Jackson, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Attorney General
U.S. Department of Justice
Citizen Suit Coordinator
Room 2615
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Re: *California Sportfishing Protection Alliance et al. v. Syar Industries, Inc.*;
Case No. 2:09-cv-02745-GEB-EFB Settlement Agreement; 45-day review

Dear Citizen Suit Coordinators,

On March 12, 2010, the parties in the above-captioned case agreed to enter into a settlement agreement setting forth mutually agreeable settlement terms to resolve the matter in its entirety. Pursuant to the terms of the settlement agreement and 40 C.F.R. § 135.5, the enclosed settlement agreement is being submitted to the United States Environmental Protection Agency and the U.S. Department of Justice for a 45-day review period. If you have any questions regarding the settlement agreement, please feel free to contact me or counsel for Defendants listed below. Thank you for your attention to this matter.

Sincerely,

Michael R. Lozeau
Attorney for Plaintiff California Sportfishing Protection Alliance

cc via First Class Mail:
cc via e-mail:

Jared Blumenfeld, Regional Administrator, EPA Region 9
Christopher J. Carr, Morrison & Foerster LLP,
Counsel for Defendant (415) 268-7246
Andrew Packard, Counsel for Plaintiff
Laurie Kermish, EPA Region 9

Enclosures

DEPT. OF JUSTICE - ENRD
ENVIRONMENTAL DIVISION

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SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims ("AGREEMENT") is entered into between the California Sportfishing Protection Alliance and Northern California River Watch (collectively "CSPA") and Syar Industries, Inc. ("Syar") (collectively, the "SETTLING PARTIES") with respect to the following facts and objectives:

RECITALS

WHEREAS, California Sportfishing Protection Alliance is a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, dedicated to the protection, enhancement, and restoration of the Suisun Bay, the San Francisco Bay, and other California waters. Bill Jennings is the Chairperson and a member of the California Sportfishing Protection Alliance;

WHEREAS, Northern California River Watch is a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, dedicated to protect, enhance, and restore the surface and subsurface waters of Northern California. Robert Rawson is the Vice President of Northern California River Watch;

WHEREAS, Syar Industries, Inc. is a corporation organized under the laws of the State of California that operates the Lake Herman Quarry located at 885 Lake Herman Road in Vallejo, California (the "Facility") which discharges storm water pursuant to State Water Resources Control Board Water Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities (hereinafter, the "General Permit"). Operations at the Lake Herman Quarry include rock quarrying; mine reclamation; rock crushing, processing and sales; Portland cement concrete manufacturing and sales; asphaltic concrete manufacturing and sales; recycling of broken Portland cement concrete and asphaltic concrete; fixed and mobile equipment maintenance and repair; and other operations related to the above. A map of the Facility is attached hereto as Exhibit A and incorporated by reference;

WHEREAS, on or about May 5, 2009, CSPA provided Syar with a Notice of Violation and Intent to File Suit ("60-Day Notice Letter") under Section 505 of the Federal Water Pollution Control Act (the "Act" or "Clean Water Act"), 33 U.S.C. § 1365;

WHEREAS, on October 1, 2009, CSPA filed its Complaint in the United States District Court for the Eastern District of California against Syar (*California Sportfishing Protection Alliance et al v. Syar Industries, Inc.*, Case No. 2:09-cv-02745-GEB-EFB). A true and correct copy of the Complaint, including the 60-Day Notice Letter, is attached hereto as Exhibit B and incorporated by reference;

WHEREAS, Syar denies any and all of CSPA's claims in its 60-Day Notice Letter and Complaint;

WHEREAS, CSPA and Syar, by and through their authorized representatives and without either adjudication of CSPA's claims or admission by Syar of any alleged violation or other wrongdoing, have chosen to resolve in full CSPA's allegations in the 60-Day Notice Letter and Complaint through settlement and avoid the cost and uncertainties of further litigation; and

WHEREAS, CSPA and Syar have agreed that it is in their mutual interest to enter into this AGREEMENT setting forth the terms and conditions appropriate to resolving CSPA's allegations set forth in the 60-Day Notice Letter and Complaint.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CSPA and Syar hereby agree as follows:

EFFECTIVE DATE

1. The term "Effective Date," as used in this AGREEMENT, shall mean the last date on which the signature of a party to this AGREEMENT is executed.

COMMITMENTS OF CSPA

2. **Stipulation to Dismiss and [Proposed] Order.** Within ten (10) calendar days of the expiration of the Agencies' review period specified in Paragraph 19 below, CSPA shall file a Stipulation to Dismiss and [Proposed] Order thereon pursuant to Federal Rule of Civil Procedure

41(a)(2) with the United States District Court for the Eastern District of California ("District Court"), with this AGREEMENT attached and incorporated by reference, specifying that CSPA is dismissing all claims in CSPA's Complaint. Consistent with Paragraphs 25 and 26 herein, the Stipulation to Dismiss and [Proposed] Order shall state that the District Court will maintain jurisdiction through December 1, 2012 for purposes of resolving any disputes between the SETTLING PARTIES with respect to any provision of this AGREEMENT. If the District Court chooses not to enter the Order, this AGREEMENT shall be null and void.

COMMITMENTS OF SYAR

3. **Compliance with General Permit.** Syar agrees to operate the Facility in compliance with the applicable requirements of the General Permit and Clean Water Act.

4. **Implemented Storm Water Controls.** Syar shall maintain in good working order all storm water collection and treatment systems currently installed or to be installed pursuant to this AGREEMENT, including but not limited to, existing housekeeping measures.

5. **Additional Best Management Practices.** Within THIRTY (30) calendar days after the EFFECTIVE DATE, Syar shall implement the following structural and non-structural best management practices ("BMPs") to improve the storm water pollution prevention measures in each of the indicated drainage areas at the Facility, marked on Exhibit A:

Outfall A

- a. Syar shall relocate the sampling point for Outfall A, previously across Lake Herman Road, to the outboard side of the access road. This new sampling location will be denoted "Outfall A1."
- b. To create additional storm water retention and to provide a means to settle out and trap sediment before leaving the outfall, Syar shall install a rock sediment trap in the form of a gravel-filled filtration trench on both sides of the drop inlet above Outfall A1.

- c. To enhance the effectiveness of the sediment trapping and settling of sediment prior to water entering the gravel trenches, Syar shall install gravel on the road at least 25 feet on either side of the drop inlet leading to Outfall A1.
- d. Syar shall place gravel check dams at intervals along the road side ditches immediately above the drop inlet leading to Outfall A1.
- e. To minimize and control erosion on the hillside above Outfall A1 at the south end of the Facility, Syar shall repair the existing rills and slope bank and install a new drain inlet and piped slope drain on the bench above where the erosion occurred previously. Syar shall place rock at the discharge of the slope drain to aid in energy dissipation of the storm water. Syar shall install sediment controls such as hydro-seeding and wattles to protect the repaired slope.

Outfall B

- f. To improve the storm water management in the drainage inlet north of the maintenance shop, Syar shall install a rock check dam and line the area immediately around the drainage inlet with rock, sand bags, and other similar BMPs designed to reduce storm water velocities and filter sediment.

Outfall C

- g. To create additional storm water retention and to provide a means to settle out and trap sediment before leaving the outfall, Syar shall install a rock sediment trap on either side of Outfall C in the form of a gravel-filled filtration trench.
- h. To filter water from the gravel trenches, Syar shall install additional hay bales in the ditch prior to Outfall C.

- i. To filter storm water exiting the gravel trenches before entering Outfall C, Syar shall install a wattle and gravel around the drop inlet leading to the outfall.

6. **Sweeping.** Syar agrees to make the following enhancements to its sweeping program.

- a. Syar shall conduct regular sweeping of the paved areas of the Facility using a regenerative sweeper. Syar shall conduct at least 800 hours of sweeping per year, adjusting the frequency of sweeping during the year to comport with conditions at the Facility. For example, Syar shall sweep more frequently during busier periods that generate greater customer vehicle trackout, and prior to anticipated rain events.
- b. Syar will describe the sweeping program, including the areas to be swept, in a appendix to the Facility's Storm Water Pollution Prevention Plan ("SWPPP").
- c. All sweeping activities performed at the Facility shall be recorded in a sweeping log. A sample blank log form will be included in the Facility's SWPPP.

7. **Monitoring.** Syar agrees to perform the additional monitoring described herein during the 2009-2010, 2010-2011, and 2011-2012 wet seasons (October 1 – May 30, each year).

- a. During the 2009-2010 and 2010-2011 wet seasons, Syar shall sample and analyze storm water discharges from four (4) qualifying storm events that result in discharge consistent with the requirements and protocols set forth in the General Permit. During the 2011-2012 wet season, Syar shall sample and analyze storm water discharges from three (3) qualifying storm events that result in discharge consistent with the requirements and protocols set forth in the General Permit. If fewer than the indicated number of qualifying storm occurs, Syar shall collect samples from as

many qualifying storm events as do occur. Syar shall collect samples at Outfalls A1, B, and C, and Sampling Points E and F.

- b. Syar shall analyze each storm water sample taken in accordance with the General Permit and this Agreement for, at a minimum, the constituents listed in Table 1.
- c. After the EFFECTIVE DATE, Syar shall conduct monthly visual observations of each discharge location for at least one qualifying rain event per month that results in any discharge from the Facility. Syar shall maintain written records describing these observations.
- d. All maintenance, repair, and replacement activities relating to the Facility's storm water management program shall be recorded and described on appropriate written records. Such records shall include, but not be limited to, filter repairs and replacements. The written records for each wet season shall be kept with the remaining written records required under the Facility's SWPPP.
- e. Syar shall photograph each sampling location (1) at each time a sample is taken from that location and (2) at each sampling location during the monthly wet weather storm inspections required by the General Permit.
- f. All photographs required by this Settlement Agreement shall be in color and electronically formatted. Electronic copies of the photographs shall be retained and named in reference to the date it was taken, the initials of the person taking the photograph and the location of the photographed area (for example, "3.13.2010 MRL Out-A"). Any photograph required by this Settlement Agreement shall be provided to CSPA upon request via a mutually agreeable electronic format.

8. **Monitoring Results.** Analytical results from Syar's storm water sampling and analysis during the term of this AGREEMENT shall be provided to CSPA within 14 days of receipt of the analytical results by Syar or its counsel.

9. **Amendment of SWPPP.** Within sixty (60) days of the EFFECTIVE DATE of this AGREEMENT, Syar shall amend the Facility's SWPPP to incorporate all changes, improvements, sample forms, and best management practices set forth in or resulting from this AGREEMENT, if not already included in the SWPPP (or appendices thereto). Syar shall ensure that all maps, tables, and text comply with the requirements of the General Permit. Syar shall ensure that the SWPPP describes all structural and non-structural BMPs, details the measures to be installed, and discusses why such BMPs will be effective in addressing the pollutant sources at the Facility. The SWPPP shall include appendices describing the regenerative sweeping program, the tire wash, and the BMPs ("BMP Manual"). A copy of the amended SWPPP shall be provided to CSPA within thirty (30) days of completion.

10. **Meet and Confer Regarding Exceedance of Levels of Potential Concern.** If analytical results of storm water samples taken by Syar during the 2009-2010, 2010-2011, and/or 2011-2012 wet season indicate that storm water discharges from the Facility exceed the levels indicated in Table 1 then Syar agrees to take additional feasible measures aimed at reducing pollutants in the Facility's storm water to levels at or below these levels.

In furtherance of that objective, by July 30 of each year, Syar shall prepare a written statement ("Memorandum") discussing:

- (1) Any constituent which experienced an excess of the levels indicated in Table 1;
- (2) An explanation of the possible cause(s) and/or source(s) of the excess levels; and
- (3) Additional feasible best management practices ("BMPs") that will be taken to further reduce the possibility of future excess levels.

The Memorandum shall also include a comparison of the results from storm water sampling at Sampling Point E and Sampling Point F. Such Memorandum shall be e-mailed and sent via first class mail to CSPA not later than July 30th following the conclusion of each wet season.

11. Any additional measures set forth in the Memorandum shall be implemented as soon as practicable, but not later than October 1 of each year. Prior to October 1 of each year, Syar's SWPPP shall be amended as necessary to include any additional BMP measures designated in the Memorandum.

12. Upon receipt of the Memorandum, CSPA may review and comment on any additional measures. If requested by CSPA within thirty (30) days of receipt of such Memorandum, CSPA and Syar shall meet and confer and conduct a site inspection within sixty (60) days after the receipt of the Memorandum to discuss the contents of the Memorandum and the adequacy of proposed measures to improve the quality of the Facility's storm water to levels at or below the Action Levels. If within thirty (30) days of the parties meeting and conferring, the parties do not agree on the adequacy of the additional measures set forth in the Memorandum, the SETTLING PARTIES may agree to seek a settlement conference with the Magistrate Judge assigned to this action pursuant to Paragraphs 25 and 26 below. If the SETTLING PARTIES fail to reach agreement on additional measures, CSPA may bring a motion before the Magistrate Judge consistent with Paragraphs 25 and 26 below. If CSPA does not request a meet and confer regarding the Memorandum within thirty (30) days of receipt, CSPA shall waive any right to object to such Memorandum pursuant to this AGREEMENT.

13. Any concurrence or failure to object by CSPA with regard to the reasonableness of any additional measures required by this AGREEMENT or implemented by Syar shall not be deemed to be an admission of the adequacy of such measures should they fail to bring the Facility's storm water into compliance with applicable water quality criteria or the General Permit's BAT requirements.

14. In addition to any site inspections conducted as part of meeting and conferring on additional measures set forth above, Syar shall permit representatives of CSPA to perform one (1) additional site visit to the Facility during normal daylight business hours during the term of this AGREEMENT at a mutually convenient time within fourteen (14) fourteen days of CSPA's written request.

15. **Provision of Documents and Reports.** During the life of this AGREEMENT, Syar shall provide CSPA with a copy of all documents submitted to the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board") or the State Water Resources Control Board ("State Board") concerning the Facility's storm water discharges, including but not limited to all documents and reports submitted to the Regional Board and/or State Board as required by the General Permit. Such documents and reports shall be mailed to CSPA with five (5) days of submission to such agency. Syar also shall provide CSPA a copy of any documents referenced in this agreement, including but not limited to logs, photographs, or analyses, within fourteen (14) days of a written request (via e-mail or regular mail) by CSPA.

16. **Mitigation Payment.** In recognition of the good faith efforts by Syar to comply with all aspects of the General Permit and the Clean Water Act, and in lieu of payment by Syar of any penalties which may have been assessed in this action if it had proceeded to trial, the SETTLING PARTIES agree that Syar will pay the sum of forty-five thousand dollars (\$45,000) to the Rose Foundation for Communities and the Environment ("Rose Foundation") for the sole purpose of providing grants to environmentally beneficial projects within the San Francisco Bay/Sacramento – San Joaquin Delta Estuary, relating to water quality improvements in those areas. Payment shall be made by Syar within fifteen (15) calendar days of the District Court's entry of the Order described in Paragraph 2 of this AGREEMENT. Payment shall be provided to the Rose Foundation as follows: Rose Foundation, 6008 College Avenue, Oakland, CA 94618, Attn: Tim Little. The Rose Foundation shall provide notice to the SETTLING PARTIES within thirty (30) days of when the funds are dispersed by the Rose Foundation, setting forth the recipient and purpose of the funds.

17. **Fees, Costs, and Expenses.** As reimbursement for CSPA's investigative, expert and attorneys' fees and costs, Syar shall pay CSPA the sum of thirty-nine thousand five hundred dollars (\$39,500). Payment shall be made by Syar within fifteen (15) calendar days of the District Court's entry of the Order dismissing the action described in Paragraph 2 of this AGREEMENT. Payment by Syar to CSPA shall be made in the form of a single check payable to "Lozeau Drury LLP Attorney-Client Trust Account," and shall constitute full payment for all costs of litigation, including investigative, expert and attorneys' fees and costs incurred by CSPA.

that have or could have been claimed in connection with CSPA's claims, up to and including the Effective Date of this AGREEMENT.

18. **Compliance Oversight Fees and Costs:** As reimbursement for CSPA's future fees and costs that will be incurred in order for CSPA to monitor Syar's compliance with this AGREEMENT and to effectively meet and confer and evaluate monitoring results for the Facility, Syar agrees to reimburse CSPA for fees and costs incurred in overseeing the implementation of this AGREEMENT up to but not exceeding five thousand (\$5,000.00) per wet season. Fees and costs reimbursable pursuant to this paragraph may include, but are not limited to, those incurred by CSPA or its counsel to conduct site inspections, review of water quality sampling reports, review of annual reports, discussion with representatives of Syar concerning potential changes to compliance requirements, preparation and participation in meet and confer sessions and mediation, and water quality sampling. CSPA shall provide an invoice containing an itemized description for any fees and costs claimed. Up to three annual payments (one addressing any monitoring associated with the 2009-2010 wet season, one addressing monitoring associated with the 2010-2011 wet season, and one addressing monitoring associated with the 2011-2012 wet season) shall be made payable to "Lozeau Drury LLP Attorney-Client Trust Account" within thirty (30) days of receipt of an invoice from CSPA which contains an itemized description of fees and costs incurred by CSPA to monitor implementation of the SETTLEMENT AGREEMENT during the previous twelve (12) months.

19. **Review by Federal Agencies.** CSPA shall submit this AGREEMENT to the U.S. EPA and the U.S. Department of Justice (hereinafter, the "Agencies") via certified mail, return receipt requested, within five (5) days after the Effective Date of this AGREEMENT for review consistent with 40 C.F.R. § 135.5. The Agencies' review period expires forty-five (45) days after receipt of the AGREEMENT by both Agencies, as evidenced by the return receipts, copies of which shall be provided to Syar upon receipt by CSPA. In the event that the Agencies comment negatively on the provisions of this AGREEMENT, CSPA and Syar agree to meet and confer to attempt to resolve the issue(s) raised by the Agencies. If CSPA and Syar are unable to resolve any issue(s) raised by the Agencies in their comments, CSPA and Syar agree to expeditiously seek a settlement conference with the Judge assigned to the Complaint in this matter to resolve the issue(s).

NO ADMISSION OR FINDING

20. Neither this AGREEMENT nor any payment pursuant to the AGREEMENT shall constitute evidence or be construed as a finding, adjudication, or acknowledgment of any fact, law or liability, nor shall it be construed as an admission of violation of any law, rule or regulation. However, this AGREEMENT and/or any payment pursuant to the AGREEMENT may constitute evidence in actions seeking compliance with this AGREEMENT.

MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE

21. In consideration of the above, and except as otherwise provided by this AGREEMENT, the SETTLING PARTIES hereby forever and fully release each other and their respective successors, assigns, officers, agents, employees, and all persons, firms and corporations having an interest in them, from any and all claims and demands of any kind, nature, or description whatsoever, and from any and all liabilities, damages, injuries, actions or causes of action, either at law or in equity, which the SETTLING PARTIES have against each other arising from CSPA's allegations and claims as set forth in the 60-Day Notice Letter and Complaint up to and including the Termination Date of this AGREEMENT.

22. The SETTLING PARTIES acknowledge that they are familiar with section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Except as otherwise provided by this AGREEMENT, the SETTLING PARTIES hereby waive and relinquish any rights or benefits they may have under California Civil Code section 1542 with respect to any other claims against each other arising from, or related to, the allegations and claims as set forth in the 60-Day Notice Letter and Complaint up to and including the Termination Date of this AGREEMENT.

23. For the period beginning on the Effective Date and ending on December 1, 2012, CSPA agrees that neither CSPA, its officers, executive staff, members of its governing board nor

any organization under the control of CSPA, its officers, executive staff, or members of its governing board, will file any lawsuit against Syar seeking relief for alleged violations of the Clean Water Act or violations of the General Permit at the Lake Herman Quarry facility. CSPA further agrees that, beginning on the EFFECTIVE DATE and ending on December 1, 2012, CSPA will not support other lawsuits, by providing financial assistance, personnel time or other affirmative actions, against Syar that may be proposed by other groups or individuals who would rely upon the citizen suit provision of the Clean Water Act to challenge Syar's compliance with the Clean Water Act or the General Permit at the Lake Herman Quarry facility.

TERMINATION DATE OF AGREEMENT

24. This AGREEMENT shall terminate on December 1, 2012.

DISPUTE RESOLUTION PROCEDURES

25. Except as specifically noted herein, any disputes with respect to any of the provisions of this AGREEMENT shall be resolved through the following procedure. The SETTLING PARTIES agree to first meet and confer to resolve any dispute arising under this AGREEMENT. In the event that such disputes cannot be resolved through this meet and confer process, the SETTLING PARTIES agree to request a settlement meeting before the Magistrate Judge assigned to this action. In the event that the SETTLING PARTIES cannot resolve the dispute by the conclusion of the settlement meeting with the Magistrate Judge, the SETTLING PARTIES agree to submit the dispute via motion to the Magistrate Judge.

26. In resolving any dispute arising from this AGREEMENT, the Judge shall have discretion to award attorneys' fees and costs to either party. The relevant provisions of the then-applicable Clean Water Act and Rule 11 of the Federal Rules of Civil Procedure shall govern the allocation of fees and costs in connection with the resolution of any disputes before the Magistrate Judge. The Magistrate Judge shall award relief limited to compliance orders and awards of attorneys' fees and costs, subject to proof. The SETTLING PARTIES agree to file any waivers necessary for the Magistrate Judge to preside over any settlement conference and motion practice.

BREACH OF SETTLEMENT AGREEMENT

27. **Impossibility of Performance.** Where implementation of the actions set forth in this AGREEMENT, within the deadlines set forth in those paragraphs, becomes impossible, despite the timely good faith efforts of the SETTLING PARTIES, the party who is unable to comply shall notify the other in writing within seven (7) days of the date that the failure becomes apparent, and shall describe the reason for the non-performance. The SETTLING PARTIES agree to meet and confer in good faith concerning the non-performance and, where the SETTLING PARTIES concur that the non-performance was or is impossible, despite the timely good faith efforts of one of the SETTLING PARTIES, new performance deadlines shall be established. In the event that the SETTLING PARTIES cannot timely agree upon the terms of such a stipulation, either of the SETTLING PARTIES shall have the right to invoke the dispute resolution procedure described herein.

GENERAL PROVISIONS

28. **Construction.** The language in all parts of this AGREEMENT shall be construed according to its plain and ordinary meaning, except as to those terms defined by law, in the General Permit, Clean Water Act or specifically herein.

29. **Choice of Law.** This AGREEMENT shall be governed by the laws of the United States, and where applicable, the laws of the State of California.

30. **Severability.** In the event that any provision, section, or sentence of this AGREEMENT is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

31. **Correspondence.** All notices required herein or any other correspondence pertaining to this AGREEMENT shall be sent by regular, certified, or overnight mail as follows:

If to CSPA:

Bill Jennings, Chairman
California Sportfishing Protection Alliance
3536 Rainier Road
Stockton, CA 95204

Tel: (209) 464-5067
deltakeep@aol.com

And to:

Robert Rawson
Northern California River Watch
500 N. Main Street, Suite 110
Sebastopol, CA 95472
iws@sonic.net

And to:

Michael R. Lozeau
Douglas J. Chermak
Lozeau | Drury LLP
1516 Oak Street, Suite 216
Alameda, CA 94501
Tel: (510) 749-9102
michael@lozeaudrury.com
doug@lozeaudrury.com

If to Syar:

Michael D. Corrigan
Syar Industries, Inc.
P.O. Box 2540
2301 Napa-Vallejo Highway
Napa, California 94558
Tel: (707) 259-5716
mcorrigan@syar.com

And to:

Christopher J. Carr
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482
Tel: (415) 268-6988
ccarr@mofo.com

Notifications of communications shall be deemed submitted on the date that they are e-mailed, postmarked and sent by first-class mail or deposited with an overnight mail/delivery service. Any change of address or addresses shall be communicated in the manner described above for giving notices.

32. **Counterparts.** This AGREEMENT may be executed in any number of counterparts, all of which together shall constitute one original document. Telecopied, scanned (.pdf), and/or facsimiled copies of original signature shall be deemed to be originally executed counterparts of this AGREEMENT.

33. **Assignment.** Subject only to the express restrictions contained in this AGREEMENT, all of the rights, duties and obligations contained in this AGREEMENT shall inure to the benefit of and be binding upon the SETTLING PARTIES, and their successors and assigns.

34. **Modification of the Agreement:** This AGREEMENT, and any provisions herein, may not be changed, waived, discharged or terminated unless by a written instrument, signed by the SETTLING PARTIES.

35. **Full Settlement.** This AGREEMENT constitutes a full and final settlement of this matter. It is expressly understood and agreed that the AGREEMENT has been freely and voluntarily entered into by the SETTLING PARTIES with and upon advice of counsel.

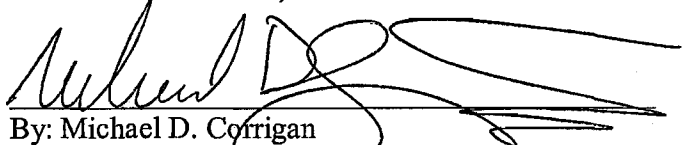
36. **Integration Clause.** This is an integrated AGREEMENT. This AGREEMENT is intended to be a full and complete statement of the terms of the agreement between the SETTLING PARTIES and expressly supersedes any and all prior oral or written agreements covenants, representations and warranties (express or implied) concerning the subject matter of this AGREEMENT.

37. **Authority.** The undersigned representatives for CSPA and Syar each certify that he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions of this AGREEMENT.

The SETTLING PARTIES hereby enter into this AGREEMENT.

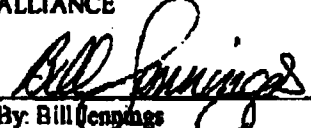
Date: MARCH 12, 2010

SYAR INDUSTRIES, INC.


By: Michael D. Corrigan
Title: Assistant General Counsel


Date: 3 March, 2010

CALIFORNIA SPORTFISHING PROTECTION
ALLIANCE


By: Bill Jennings
Title: Executive Director

Date: 3 March, 2010

NORTHERN CALIFORNIA RIVER WATCH


By: Robert Rawson
Title: Vice President

APPROVED AS TO FORM:

For DEFENDANT

Date: _____, 2010

MORRISON & FOERSTER LLP

By: Christopher J. Carr, Esq.

Date: 12 March, 2010

For PLAINTIFF

LOZEAU / DRURY LLP


By: Michael R. Lozeau, Esq.

Date: _____, 2010

CALIFORNIA SPORTFISHING PROTECTION
ALLIANCE

By: Bill Jennings
Title: Executive Director

Date: _____, 2010

NORTHERN CALIFORNIA RIVER WATCH

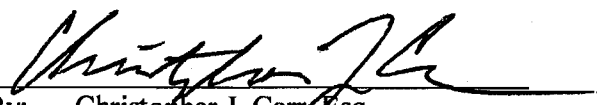
By: Robert Rawson
Title: Vice President

APPROVED AS TO FORM:

Date: March 12, 2010

For DEFENDANT

MORRISON & FOERSTER LLP


By: Christopher J. Carr, Esq.

Date: _____, 2010

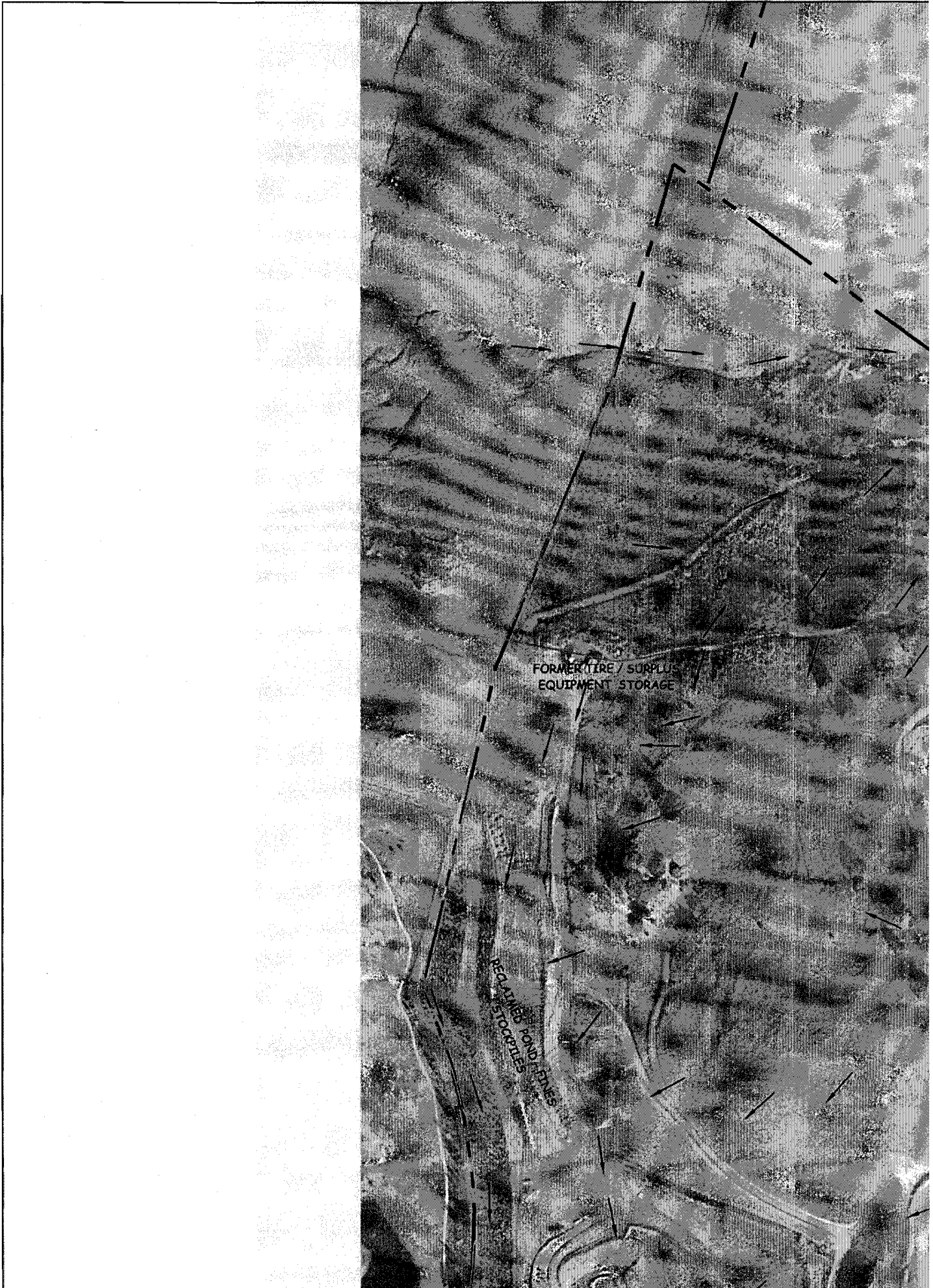
For PLAINTIFF

LOZEAU | DRURY LLP

By: Michael R. Lozeau, Esq.

TABLE 1

<u>Constituent</u>	<u>Action Level</u>
Total Suspended Solids (TSS)	100 mg/L
pH	<6.0 or >9.0
Specific Conductance (SC)	200 µmhos/cm
Total Organic Carbon (TOC)	110 mg/L
Oil and Grease (O&G)	15 mg/L
Nitrate + Nitrite (N+N)	0.68 mg/L
Iron (Fe)	1.0 mg/L
Aluminum (Al)	0.75 mg/L
Copper (Cu)	0.0636 mg/L
Zinc (Zn)	0.117 mg/L
Chemical Oxygen Demand (COD)	120 mg/L
Lead (pb)	0.0816 mg/L



1 of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28
2 U.S.C. § 1331 (an action arising under the laws of the United States). The relief requested is
3 authorized pursuant to 28 U.S.C. §§ 2201-02 (power to issue declaratory relief in case of
4 actual controversy and further necessary relief based on such a declaration); 33 U.S.C. §§
5 1319(b), 1365(a) (injunctive relief); and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

6 2. On or about May 5, 2009, Plaintiffs provided notice of Defendant's violations
7 of the Act, and of its intention to file suit against Defendant, to the Administrator of the
8 United States Environmental Protection Agency ("EPA"); the Administrator of EPA Region
9 IX; the Executive Director of the State Water Resources Control Board ("State Board"); the
10 Executive Officer of the California Regional Water Quality Control Board, San Francisco
11 Bay Region ("Regional Board"); and to Defendant, as required by the Act, 33 U.S.C. §
12 1365(b)(1)(A). A true and correct copy of Plaintiffs' notice letter is attached as Exhibit A,
13 and is incorporated by reference.

14 3. More than sixty days have passed since notice was served on Defendant and
15 the State and federal agencies. Plaintiffs are informed and believe, and thereupon allege,
16 that neither the EPA nor the State of California has commenced or is diligently prosecuting a
17 court action to redress the violations alleged in this complaint. This action's claim for civil
18 penalties is not barred by any prior administrative penalty under Section 309(g) of the Act,
19 33 U.S.C. § 1319(g).

20 4. Venue is proper in the Eastern District of California pursuant to Section
21 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located
22 within this judicial district. Pursuant to Local Rule 3-120, intradistrict venue is proper in
23 Sacramento, California, because the source of the violations is located within Solano
24 County.

25 **II. INTRODUCTION**

26 5. This complaint seeks relief for Defendant's discharges of polluted storm water
27 and non-storm water pollutants from Defendant SYAR INDUSTRIES, INC.'s quarry,
28 asphalt mixing, ready-mix concrete, and stone crushing facility located at 885 Lake Herman

1 Road in Vallejo, California ("the Facility") in violation of the Act and National Pollutant
2 Discharge Elimination System ("NPDES") Permit No. CAS000001, State Water Resources
3 Control Board Water Quality Order No. 91-13-DWQ, as amended by Water Quality Order
4 No. 92-12-DWQ and Water Quality Order No. 97-03-DWQ (hereinafter "the Order" or
5 "Permit" or "General Permit"). Defendant's violations of the discharge, treatment
6 technology, monitoring requirements, and other procedural and substantive requirements of
7 the Permit and the Act are ongoing and continuous.

8 6. The failure on the part of persons and facilities such as Defendant and its
9 industrial facility to comply with storm water requirements is recognized as a significant
10 cause of the continuing decline in water quality of Napa River, Suisun Bay and other area
11 receiving waters. The general consensus among regulatory agencies and water quality
12 specialists is that storm pollution amounts to more than half of the total pollution entering
13 the aquatic environment each year. In many areas of Solano County, storm water from
14 commercial and industrial activities flows completely untreated through storm drain systems
15 or other channels directly to the waters of the United States.

16 **III. PARTIES**

17 7. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE
18 ("CSPA") is a non-profit public benefit corporation organized under the laws of the State of
19 California with its main office in Stockton, California. CSPA has approximately 2,000
20 members who live, recreate and work in and around waters of the State of California,
21 including Suisun Bay and the Napa River. CSPA is dedicated to the preservation,
22 protection, and defense of the environment, the wildlife and the natural resources of all
23 waters of California. To further these goals, CSPA actively seeks federal and state agency
24 implementation of the Act and other laws and, where necessary, directly initiates
25 enforcement actions on behalf of itself and its members.

26 8. Members of CSPA reside in and around Suisun Bay and the Napa River and
27 enjoy using Suisun Bay and the Napa River for recreation and other activities. Members of
28 CSPA use and enjoy the waters into which Defendant has caused, is causing, and will

1 continue to cause, pollutants to be discharged. Members of CSPA use those areas to fish,
2 sail, boat, kayak, swim, bird watch, view wildlife and engage in scientific study including
3 monitoring activities, among other things. Defendant's discharges of pollutants threaten or
4 impair each of those uses or contribute to such threats and impairments. Thus, the interests
5 of CSPA's members have been, are being, and will continue to be adversely affected by
6 Defendant's failure to comply with the Clean Water Act and the Permit. The relief sought
7 herein will redress the harms to CSPA caused by Defendant's activities.

8 9. Plaintiff NORTHERN CALIFORNIA RIVER WATCH ("River Watch") is a
9 501(c)(3) non-profit public benefit corporation duly organized under the laws of the State of
10 California, with headquarters and main office located in Sebastopol, California. River
11 Watch is dedicated to protect, enhance and help restore the surface and subsurface waters of
12 Northern California. To further these goals, River Watch actively seeks federal and state
13 agency implementation of the Act and other laws and, where necessary, directly initiates
14 enforcement actions on behalf of itself and its members.

15 10. Members of River Watch live in Northern California and use and enjoy the
16 waters into which Defendant has caused, is causing, and will continue to cause, pollutants to
17 be discharged. Members of River Watch have interests in the watersheds which have been,
18 are being, or may be adversely affected by Defendant's violations of the Act as alleged in
19 this Complaint. Said members use the affected waters and watershed areas for domestic
20 water, recreation, sports, fishing, swimming, hiking, photography, nature walks, religious,
21 spiritual and shamanic practices, and the like. Furthermore, the relief sought will redress the
22 injury in fact to PLAINTIFF and its members, the likelihood of future injury and
23 interference with the interests of said members. The relief sought herein will redress the
24 harms to River Watch caused by Defendant's activities.

25 11. Continuing commission of the acts and omissions alleged above will irreparably
26 harm Plaintiffs and its members, for which harm they have no plain, speedy or adequate
27 remedy at law.

28 12. Defendant SYAR INDUSTRIES, INC. ("Syar") is a corporation organized

1 under the laws of California. Defendant Syar operates a quarry, asphalt mixing, ready-mix
2 concrete, and stone crushing facility in Vallejo, California.

3 **IV. STATUTORY BACKGROUND**

4 13. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any
5 pollutant into waters of the United States, unless such discharge is in compliance with
6 various enumerated sections of the Act. Among other things, Section 301(a) prohibits
7 discharges not authorized by, or in violation of, the terms of an NPDES permit issued
8 pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

9 14. Section 402(p) of the Act establishes a framework for regulating municipal and
10 industrial storm water discharges under the NPDES program. 33 U.S.C. § 1342(p). States
11 with approved NPDES permit programs are authorized by Section 402(p) to regulate
12 industrial storm water discharges through individual permits issued to dischargers or through
13 the issuance of a single, statewide general permit applicable to all industrial storm water
14 dischargers. 33 U.S.C. § 1342(p).

15 15. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of the
16 U.S. EPA has authorized California's State Board to issue NPDES permits including general
17 NPDES permits in California.

18 16. The State Board elected to issue a statewide general permit for industrial storm
19 water discharges. The State Board issued the General Permit on or about November 19,
20 1991, modified the General Permit on or about September 17, 1992, and reissued the
21 General Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water
22 Act, 33 U.S.C. § 1342(p).

23 17. In order to discharge storm water lawfully in California, industrial dischargers
24 must comply with the terms of the General Permit or have obtained and complied with an
25 individual NPDES permit. 33 U.S.C. § 1311(a).

26 18. The General Permit contains several prohibitions. Effluent Limitation B(3) of
27 the General Permit requires dischargers to reduce or prevent pollutants in their storm water
28 discharges through implementation of the Best Available Technology Economically

Achievable ("BAT") for toxic and nonconventional pollutants and the Best Conventional Pollutant Control Technology ("BCT") for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Discharge Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges to any surface or ground water that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit prohibits storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

19. In addition to absolute prohibitions, the General Permit contains a variety of substantive and procedural requirements that dischargers must meet. Facilities discharging, or having the potential to discharge, storm water associated with industrial activity that have not obtained an individual NPDES permit must apply for coverage under the State's General Permit by filing a Notice of Intent to Comply ("NOI"). The General Permit requires existing dischargers to have filed their NOIs before March 30, 1992.

20. Dischargers must develop and implement a Storm Water Pollution Prevention Plan ("SWPPP"). The SWPPP must describe storm water control facilities and measures that comply with the BAT and BCT standards. The General Permit requires that an initial SWPPP have been developed and implemented before October 1, 1992. The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (Section A(2)). The SWPPP's BMPs must implement BAT and BCT (Section B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow

1 pattern and nearby water bodies, the location of the storm water collection, conveyance and
2 discharge system, structural control measures, impervious areas, areas of actual and potential
3 pollutant contact, and areas of industrial activity (Section A(4)); a list of significant materials
4 handled and stored at the site (Section A(5)); a description of potential pollutant sources
5 including industrial processes, material handling and storage areas, dust and particulate
6 generating activities, and a description of significant spills and leaks, a list of all non-storm
7 water discharges and their sources, and a description of locations where soil erosion may
8 occur (Section A(6)). The SWPPP must include an assessment of potential pollutant sources
9 at the Facility and a description of the BMPs to be implemented at the Facility that will
10 reduce or prevent pollutants in storm water discharges and authorized non-storm water
11 discharges, including structural BMPs where non-structural BMPs are not effective (Section
12 A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised
13 where necessary (Section A(9),(10)).

14 21. Section C(3) of the General Permit requires a discharger to prepare and submit
15 a report to the Regional Board describing changes it will make to its current BMPs in order
16 to prevent or reduce any pollutant in its storm water discharges that is causing or
17 contributing to an exceedance of water quality standards. Once approved by the Regional
18 Board, the additional BMPs must be incorporated into the Facility's SWPPP. The report
19 must be submitted to the Regional Board no later than 60 days from the date the discharger
20 first learns that its discharge is causing or contributing to an exceedance of an applicable
21 water quality standard. Section C(4)(a).

22 22. Section C(11)(d) of the General Permit's Standard Provisions requires
23 dischargers to report any noncompliance to the Regional Board. *See also* Section E(6).
24 Section A(9) of the General Permit requires an annual evaluation of storm water controls
25 including the preparation of an evaluation report and implementation of any additional
26 measures in the SWPPP to respond to the monitoring results and other inspection activities.

27 23. The General Permit requires dischargers commencing industrial activities
28 before October 1, 1992 to develop and implement an adequate written monitoring and

1 reporting program no later than October 1, 1992. Existing facilities covered under the
2 General Permit must implement all necessary revisions to their monitoring programs no later
3 than August 1, 1997.

4 24. As part of their monitoring program, dischargers must identify all storm water
5 discharge locations that produce a significant storm water discharge, evaluate the
6 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control
7 measures set out in the SWPPP are adequate and properly implemented. Dischargers must
8 conduct visual observations of these discharge locations for at least one storm per month
9 during the wet season (October through May) and record their findings in their Annual
10 Report. Dischargers must also collect and analyze storm water samples from at least two
11 storms per year. Section B(5)(a) of the General Permit requires that dischargers "shall
12 collect storm water samples during the first hour of discharge from (1) the first storm event
13 of the wet season, and (2) at least one other storm event in the wet season. All storm water
14 discharge locations shall be sampled." Section B(5)(c)(i) requires dischargers to sample and
15 analyze during the wet season for basic parameters, such as pH, total suspended solids,
16 electrical conductance, and total organic content or oil & grease, certain industry-specific
17 parameters. Section B(5)(c)(ii) requires dischargers to sample for toxic chemicals and other
18 pollutants likely to be in the storm water discharged from the facility. Section B(5)(c)(iii)
19 requires discharges to sample for parameters dependent on a facility's standard industrial
20 classification ("SIC") code. Facilities that fall under SIC Code 3273 are required to analyze
21 their storm water discharge samples for iron. Dischargers must also conduct dry season
22 visual observations to identify sources of non-storm water pollution. Section B(7)(a)
23 indicates that the visual observations and samples must represent the "quality and quantity of
24 the facility's storm water discharges from the storm event." Section B(7)(c) requires that "if
25 visual observation and sample collection locations are difficult to observe or
26 sample...facility operators shall identify and collect samples from other locations that
27 represent the quality and quantity of the facility's storm water discharges from the storm
28 event."

1 25. Section B(14) of the General Permit requires dischargers to submit an annual
2 report by July 1 of each year to the executive officer of the relevant Regional Board. The
3 annual report must be signed and certified by an appropriate corporate officer. Sections
4 B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include
5 in their annual report an evaluation of their storm water controls, including certifying
6 compliance with the General Permit. *See also* Sections C(9), C(10) and B(14).

7 26. Section 505(a)(1) and Section 505(f) of the Act provide for citizen
8 enforcement actions against any “person,” including individuals, corporations, or
9 partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1) and (f),
10 § 1362(5). An action for injunctive relief under the Act is authorized by 33 U.S.C. §
11 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to
12 \$37,500 per day per violation pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§
13 1319(d), 1365 and 40 C.F.R. §§ 19.1 - 19.4.

14 27. EPA has established Parameter Benchmark Values as guidelines for
15 determining whether a facility discharging industrial storm water has implemented the
16 requisite BAT and BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). EPA has established
17 Parameter Benchmark Values for the following parameters, among others: total suspended
18 solids – 100 mg/L; oil & grease – 15 mg/L; total organic carbon – 110 mg/L; pH – 6.0 – 9.0
19 s.u.; iron – 1.0 mg/L; zinc – 0.117 mg/L; nitrate plus nitrite nitrogen (“N+N”) – 0.68 mg/L;
20 aluminum – 0.75 mg/L; copper – 0.0636 mg/L; lead – 0.0816 mg/L; and chemical oxygen
21 demand – 120 mg/L. The State Board has proposed a Benchmark Value for electrical
22 conductance of 200 µmhos/cm.

23 28. The Regional Board has established water quality standards for the Napa
24 River, Suisun Bay, and the San Francisco Bay in the Water Quality Control Plan for the San
25 Francisco Bay Basin, generally referred to as the Basin Plan.

26 29. The Basin Plan includes a narrative toxicity standard which states that “[a]ll
27 waters shall be maintained free of toxic substances in concentrations that are lethal or that
28 produce other detrimental responses in aquatic organisms.”

1 30. The Basin Plan includes a narrative oil and grease standard which states that
2 “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that
3 result in a visible film or coating on the surface of the water or on objects in the water, that
4 cause nuisance, or otherwise adversely affect beneficial uses.”

5 31. The Basin Plan provides that “[w]aters shall not contain suspended material in
6 concentrations that cause nuisance or adversely affect beneficial uses.”

7 32. The Basin Plan provides that “[t]he suspended sediment load and suspended
8 sediment discharge rate of surface waters shall not be altered in such a manner as to cause
9 nuisance or adversely affect beneficial uses.”

10 33. The Basin Plan provides that “[s]urface waters shall not contain concentrations
11 of chemical constituents in amounts that adversely affect any designated beneficial use.”

12 34. The Basin Plan provides that “[t]he pH shall not be depressed below 6.5 nor
13 raised above 8.5.”

14 35. The Basin Plan establishes a dissolved oxygen standard of 7.0 mg/L for waters
15 upstream of the Carquinez Bridge.

16 36. The Basin Plan establishes a water quality objective for iron of 0.3 mg/L and
17 for aluminum of 0.2 mg/L.

18 37. The Basin Plan establishes Freshwater Water Quality Objectives for zinc of
19 0.120 mg/L (4-day average and 1-hour average); for copper of 0.009 mg/L (4-day average)
20 and 0.013 mg/L (1-hour average); and for lead of 0.0025 mg/L (4-day average) and 0.065
21 mg/L (1-hour average).

22 38. The EPA has adopted freshwater numeric water quality standards for zinc of
23 0.12 mg/L for both the Criteria Maximum Concentration – (“CMC”) and Criteria
24 Continuous Concentration – (“CCC”); for copper of 0.013 mg/L (CMC) and 0.009 mg/L
25 (CCC); and for lead of 0.065 mg/L (CMC) and 0.0025 mg/L (CCC).

26 **V. STATEMENT OF FACTS**

27 39. Defendant Syar operates a quarry, asphalt mixing, ready-mix concrete, and
28 stone crushing facility located at 885 Lake Herman Road in Vallejo, California. The Facility

1 is engaged in the processing of various forms of crushed and broken stone, production of
2 ready-mix concrete and asphaltic paving materials. Activities at the Facility fall within SIC
3 Codes 1429, 3273, and 2951. The Facility covers approximately 386 acres, the majority of
4 which is unpaved and used for processing, transporting, and storing materials throughout the
5 Facility. On information and belief, Plaintiffs allege that there is at least one large building
6 located on the property. On information and belief, Plaintiffs allege that materials
7 processing and the movement of materials occurs both inside and outside of this building.
8 Stone, asphalt, concrete, and other materials are transported in and out of this building for
9 storage and processing in the unpaved areas of the Facility.

10 40. Defendant channels and collects storm water falling on the Facility through a
11 series of storm water drains that lead to at least six storm water outfalls. Each outfall
12 collects storm water runoff from a particular area of the Facility. The Facility's outfalls
13 discharge to either Blue Rock Springs Creek or Sulphur Springs Creek. Sulphur Springs
14 Creek flows into Lake Herman, which then flows into Suisun Bay. Blue Rock Springs
15 Creek flows into Lake Chabot, which then flows into the Napa River.

16 41. On information and belief, Plaintiffs allege that the industrial activities at the
17 site include the processing, storage, and disposal of a variety of materials including sand,
18 earth and stone, dirt and soil, asphalt, stone, concrete, and limestone. Industrial activities
19 also include the outdoor handling, processing, and storage of these materials as well as other
20 materials used in the production process.

21 42. Significant activities at the site take place outside and are exposed to rainfall.
22 These activities include the storage and movement of raw materials and finished products,
23 equipment used in the production processes; the storage and use of vehicles and equipment
24 for materials handling; and the storage, handling, and disposal of waste materials. Loading
25 and delivery of raw materials and finished products occurs outside. Trucks enter and exit the
26 Facility directly from and to a public road. Trucks and fork lifts are the primary means of
27 moving raw materials and finished products around the storage areas of the Facility. These
28 areas are exposed to storm water and storm flows due to the lack of overhead coverage,

1 berms, and other storm water controls.

2 43. Industrial machinery, heavy equipment and vehicles, including trucks and fork
3 lifts, are operated and stored at the Facility in areas exposed to storm water flows. Plaintiffs
4 are informed and believe, and thereupon allege, that such machinery and equipment leak
5 contaminants such as oil, grease, diesel fuel, anti-freeze and hydraulic fluids that are exposed
6 to storm water flows, and that such machinery and equipment track sediment and other
7 contaminants throughout the Facility.

8 44. Plaintiffs are informed and believe, and thereupon allege that the storm water
9 flows easily over the surface of the Facility, collecting suspended sediment, dirt, oils, grease,
10 and other pollutants as it flows toward the storm water drains. Storm water and any
11 pollutants contained in that storm water entering the drains flows directly to the Facility's
12 outfalls.

13 45. The management practices at the Facility are wholly inadequate to prevent the
14 sources of contamination described above from causing the discharge of pollutants to waters
15 of the United States. The Facility lacks sufficient structural controls such as grading,
16 berming, roofing, containment, or drainage structures to prevent rainfall and storm water
17 flows from coming into contact with these and other exposed sources of contaminants. The
18 Facility lacks sufficient structural controls to prevent the discharge of water once
19 contaminated. The Facility lacks adequate storm water pollution treatment technologies to
20 treat storm water once contaminated.

21 46. Since at least December 8, 2004, Defendant has taken samples or arranged for
22 samples to be taken of storm water discharges at the Facility. The sample results were
23 reported in the Facility's annual reports submitted to the Regional Board. Defendant Syar
24 certified each of those annual reports pursuant to Sections A and C of the General Permit.

25 47. Since at least December 8, 2004, the Facility has detected total suspended
26 solids and electrical conductance in storm water discharged from the Facility. Since at least
27 December 1, 2005, the Facility has detected iron, zinc, aluminum, copper, and N+N in storm
28 water discharged from the Facility. Since at least December 12, 2006, the Facility has

detected lead in storm water discharged from the Facility. Since at least December 7, 2007, the Facility has detected chemical oxygen demand in storm water discharged from the Facility. Levels of these pollutants detected in the Facility's storm water have been in excess of EPA's numeric parameter benchmark values and the State Board's proposed value for electrical conductance. Levels of these pollutants detected in the Facility's storm water have been in excess of water quality standards established in the Basin Plan.

48. The following discharges on the following dates contained concentrations of pollutants in excess of numeric water quality standards established in the Basin Plan:

Date	Parameter	Observed Concentration	Basin Plan Water Quality Objective	Location (as identified by the Facility)
2/1/2008	Iron	1.2 mg/L	0.3 mg/L	Outfall E
2/1/2008	Aluminum	1.0 mg/L	0.2 mg/L	Outfall E
2/1/2008	Iron	1.2 mg/L	0.3 mg/L	Outfall F
2/1/2008	Aluminum	0.99 mg/L	0.2 mg/L	Outfall F
1/28/2008	Iron	1.7 mg/L	0.3 mg/L	Outfall E
1/28/2008	Aluminum	1.4 mg/L	0.2 mg/L	Outfall E
1/28/2008	Iron	3 mg/L	0.3 mg/L	Outfall F
1/28/2008	Aluminum	2.4 mg/L	0.2 mg/L	Outfall F
1/4/2008	Iron	56 mg/L	0.3 mg/L	Outfall C
1/4/2008	Aluminum	22 mg/L	0.2 mg/L	Outfall C
1/4/2008	Copper	0.044 mg/L	0.009 mg/L (4-day average) – Freshwater	Outfall C
1/4/2008	Copper	0.044 mg/L	0.013 mg/L (1-hour average) – Freshwater	Outfall C
1/4/2008	Iron	180 mg/L	0.3 mg/L	Outfall A
1/4/2008	Aluminum	74 mg/L	0.2 mg/L	Outfall A

1	1/4/2008	Copper	0.13 mg/L	0.009 mg/L (4-day	Outfall A
2				average) – Freshwater	
3	1/4/2008	Copper	0.13 mg/L	0.013 mg/L (1-hour	Outfall A
4				average) – Freshwater	
5	1/4/2008	Lead	0.049 mg/L	0.0025 mg/L (4-day	Outfall A
6				average) – Freshwater	
7	1/4/2008	Zinc	0.25 mg/L	0.12 mg/L (4-day	Outfall A
8				average) – Freshwater	
9	1/4/2008	Zinc	0.25 mg/L	0.12 mg/L (1-hour	Outfall A
10				average) – Freshwater	
11	1/4/2008	Iron	51 mg/L	0.3 mg/L	Outfall B
12	1/4/2008	Aluminum	22 mg/L	0.2 mg/L	Outfall B
13	1/4/2008	Copper	0.036 mg/L	0.009 mg/L (4-day	Outfall B
14				average) – Freshwater	
15	1/4/2008	Copper	0.036 mg/L	0.013 mg/L 1-hour	Outfall B
16				average) – Freshwater	
17		Lead	0.0044 mg/L	0.0025 mg/L (4-day	Outfall B
18	1/4/2008			average) – Freshwater	
19	12/20/2007	Iron	6.4 mg/L	0.3 mg/L	Outfall A
20	12/20/2007	Aluminum	3 mg/L	0.2 mg/L	Outfall A
21		Lead	0.0044 mg/L	0.0025 mg/L (4-day	Outfall A
22	12/20/2007			average) – Freshwater	
23	12/18/2007	Iron	47 mg/L	0.3 mg/L	Outfall C
24	12/18/2007	Aluminum	18 mg/L	0.2 mg/L	Outfall C
25	12/18/2007	Copper	0.041 mg/L	0.013 mg/L 1-hour	Outfall C
26				average) – Freshwater	
27	12/18/2007	Copper	0.041 mg/L	0.009 mg/L (4-day	Outfall C
28					

			average) – Freshwater	
12/7/2007	Iron	15 mg/L	0.3 mg/L	Outfall B
12/7/2007	Aluminum	6.3 mg/L	0.2 mg/L	Outfall B
12/7/2007	Copper	0.0094 mg/L	0.009 mg/L (4-day average) – Freshwater	Outfall B
2/22/2007	Iron	44 mg/L	0.3 mg/L	Outfall D
2/22/2007	Aluminum	23 mg/L	0.2 mg/L	Outfall D
2/22/2007	Copper	0.071 mg/L	0.009 mg/L (4-day average) – Freshwater	Outfall D
2/22/2007	Copper	0.071 mg/L	0.013 mg/L 1-hour average) – Freshwater	Outfall D
2/22/2007	Lead	0.011 mg/L	0.0025 mg/L (4-day average) – Freshwater	Outfall D
2/22/2007	Zinc	1 mg/L	0.12 mg/L (4-day average) – Freshwater	Outfall D
2/22/2007	Zinc	1 mg/L	0.12 mg/L 1-hour average) – Freshwater	Outfall D
2/22/2007	Iron	14 mg/L	0.3 mg/L	Outfall C
2/22/2007	Aluminum	5.7 mg/L	0.2 mg/L	Outfall C
2/22/2007	Copper	0.013 mg/L	0.009 mg/L (4-day average) – Freshwater	Outfall C
2/22/2007	Iron	0.93 mg/L	0.3 mg/L	Outfall F
2/22/2007	Aluminum	0.66 mg/L	0.2 mg/L	Outfall F
2/8/2007	Iron	3 mg/L	0.3 mg/L	Outfall B
2/8/2007	Aluminum	1.3 mg/L	0.2 mg/L	Outfall B
2/8/2007	Iron	3.6 mg/L	0.3 mg/L	Outfall F
2/8/2007	Aluminum	2.7 mg/L	0.2 mg/L	Outfall F

1	2/8/2007	Copper	0.0093 mg/L	0.009 mg/L (4-day	Outfall F
2				average) – Freshwater	
3	2/8/2007	Iron	0.74 mg/L	0.3 mg/L	Outfall A
4	2/8/2007	Aluminum	0.37 mg/L	0.2 mg/L	Outfall A
5	2/8/2007	Iron	2 mg/L	0.3 mg/L	Outfall E
6	2/8/2007	Aluminum	0.73 mg/L	0.2 mg/L	Outfall E
7	12/12/2006	Iron	8.8 mg/L	0.3 mg/L	Outfall B
8	12/12/2006	Aluminum	3.9 mg/L	0.2 mg/L	Outfall B
9	12/12/2006	Iron	0.59 mg/L	0.3 mg/L	Outfall E
10	12/12/2006	Aluminum	0.36 mg/L	0.2 mg/L	Outfall E
11	12/12/2006	Iron	1.3 mg/L	0.3 mg/L	Outfall C
12	12/12/2006	Aluminum	0.64 mg/L	0.2 mg/L	Outfall C
13	12/12/2006	Iron	0.69 mg/L	0.3 mg/L	Outfall F
14	12/12/2006	Aluminum	0.62 mg/L	0.2 mg/L	Outfall F
15	12/12/2006	Iron	15 mg/L	0.3 mg/L	Outfall A
16	12/12/2006	Aluminum	8.9 mg/L	0.2 mg/L	Outfall A
17	12/12/2006	Copper	0.023 mg/L	0.009 mg/L (4-day	Outfall A
18				average) – Freshwater	
19	12/12/2006	Copper	0.023 mg/L	0.013 mg/L 1-hour	Outfall A
20				average) – Freshwater	
21	12/12/2006	Lead	0.01 mg/L	0.0025 mg/L (4-day	Outfall A
22				average) – Freshwater	
23	2/27/2006	Iron	8.3 mg/L	0.3 mg/L	Outfall A
24	2/27/2006	Aluminum	3.8 mg/L	0.2 mg/L	Outfall A
25	2/27/2006	Copper	0.011 mg/L	0.009 mg/L (4-day	Outfall A
26				average) – Freshwater	
27	2/27/2006	Iron	26 mg/L	0.3 mg/L	Outfall B
28					

1	2/27/2006	Aluminum	11 mg/L	0.2 mg/L	Outfall B
2	2/27/2006	Copper	0.018 mg/L	0.009 mg/L (4-day	Outfall B
3				average) – Freshwater	
4	2/27/2006	Copper	0.018	0.013 mg/L (1-hour	Outfall B
5				average) – Freshwater	
6	2/27/2006	Iron	1.9 mg/L	0.3 mg/L	Outfall C
7	2/27/2006	Aluminum	0.93 mg/L	0.2 mg/L	Outfall C
8	2/27/2006	Iron	8.3 mg/L	0.3 mg/L	Outfall D
9	2/27/2006	Aluminum	32 mg/L	0.2 mg/L	Outfall D
10	2/27/2006	Copper	0.019 mg/L	0.009 mg/L (4-day	Outfall D
11				average) – Freshwater	
12	2/27/2006	Copper	0.019 mg/L	0.013 mg/L (1-hour	Outfall D
13				average) – Freshwater	
14	2/27/2006	Zinc	1.7 mg/L	0.12 mg/L (4-day	Outfall D
15				average) – Freshwater	
16	2/27/2006	Zinc	1.7 mg/L	0.12 mg/L 1-hour	Outfall D
17				average) – Freshwater	
18	12/1/2005	Iron	9.5 mg/L	0.3 mg/L	Outfall A
19	12/1/2005	Aluminum	5.1 mg/L	0.2 mg/L	Outfall A
20	12/1/2005	Copper	0.012 mg/L	0.009 mg/L (4-day	Outfall A
21				average) – Freshwater	
22	12/1/2005	Iron	42 mg/L	0.3 mg/L	Outfall B
23	12/1/2005	Aluminum	18 mg/L	0.2 mg/L	Outfall B
24	12/1/2005	Copper	0.026 mg/L	0.009 mg/L (4-day	Outfall B
25				average) – Freshwater	
26	12/1/2005	Copper	0.026 mg/L	0.013 mg/L (1-hour	Outfall B
27				average) – Freshwater	
28					

1	12/1/2005	Iron	10 mg/L	0.3 mg/L	Outfall C
2	12/1/2005	Aluminum	4.7 mg/L	0.2 mg/L	Outfall C
3	12/1/2005	Copper	0.013 mg/L	0.009 mg/L (4-day	Outfall C
4				average) – Freshwater	
5	12/1/2005	Iron	24 mg/L	0.3 mg/L	Outfall D
6	12/1/2005	Aluminum	11 mg/L	0.2 mg/L	Outfall D
7	12/1/2005	Copper	0.044 mg/L	0.009 mg/L (4-day	Outfall D
8				average) – Freshwater	
9	12/1/2005	Copper	0.044 mg/L	0.013 mg/L (1-hour	Outfall D
10				average) – Freshwater	
11	12/1/2005	Zinc	1.1 mg/L	0.12 mg/L (4-day	Outfall D
12				average) – Freshwater	
13	12/1/2005	Zinc	1.1 mg/L	0.12 mg/L 1-hour	Outfall D
14				average) – Freshwater	

49. The levels of total suspended solids in storm water detected by the Facility have exceeded the benchmark value for total suspended solids of 100 mg/L established by EPA as well as the standard for suspended materials articulated in the Basin Plan. For example, on January 4, 2008, the level of total suspended solids measured by Defendant in the Facility's discharged storm water was 1910 mg/L. That level of total suspended solids is over nineteen times the benchmark value for total suspended solids established by EPA. The Facility also has measured levels of total suspended solids in storm water discharged from the Facility in excess of EPA's benchmark value of 100 mg/L on December 20, 2007; December 18, 2007; February 22, 2007; February 8, 2007; December 12, 2006; February 27, 2006; December 1, 2005; January 26, 2005; December 27, 2004; and December 8, 2004.

50. The levels of zinc in storm water detected by the Facility have exceeded the benchmark value for zinc of 0.117 mg/L established by EPA. For example, on January 4, 2008, the level of zinc measured by Defendant in the Facility's discharged storm water was 0.25 mg/L. That level of zinc is over twice the benchmark value for zinc established by

1 EPA. The Facility also has measured levels of zinc in storm water discharged from the
2 Facility in excess of EPA's benchmark value of 0.117 mg/L on February 22, 2007; February
3 27, 2006; and December 1, 2005.

4 51. The levels of N+N in storm water detected by the Facility have exceeded the
5 benchmark value for N+N of 0.68 mg/L established by EPA. For example, on December 7,
6 2007, the level of N+N measured by Defendant in the Facility's discharged storm water was
7 4.5 mg/L. That level of N+N is nearly seven times the benchmark value for N+N
8 established by EPA. The Facility also has measured levels of N+N in storm water
9 discharged from the Facility in excess of EPA's benchmark value of 0.68 mg/L on January
10 28, 2008; January 4, 2008; December 20, 2007; February 22, 2007; February 8, 2007;
11 December 12, 2006; February 27, 2006; and December 1, 2005.

12 52. The levels of iron in storm water detected by the Facility have exceeded the
13 benchmark value for iron of 1.0 mg/L established by EPA. For example, on January 4,
14 2008, the level of iron measured by Defendant in the Facility's discharged storm water was
15 180 mg/L. That level of iron is 180 times the benchmark value for iron established by EPA.
16 The Facility also has measured levels of iron in storm water discharged from the Facility in
17 excess of EPA's benchmark value of 1.0 mg/L on February 1, 2008; January 28, 2008;
18 December 20, 2007; December 18, 2007; December 7, 2007; February 22, 2007; February 8,
19 2007; December 12, 2006; February 27, 2006; and December 1, 2005.

20 53. The levels of aluminum in storm water detected by the Facility have exceeded
21 the benchmark value for aluminum of 0.75 mg/L established by EPA. For example, on
22 January 4, 2008, the level of aluminum measured by Defendant in the Facility's discharged
23 storm water was 74 mg/L. That level of aluminum is almost 100 times the benchmark value
24 for aluminum established by EPA. The Facility also has measured levels of aluminum in
25 storm water discharged from the Facility in excess of EPA's benchmark value of 1.0 mg/L
26 on February 1, 2008; January 28, 2008; December 20, 2007; December 18, 2007; December
27 7, 2007; February 22, 2007; February 8, 2007; December 12, 2006; February 27, 2006; and
28 December 1, 2005.

1 54. The levels of chemical oxygen demand in storm water detected by the Facility
2 have exceeded the benchmark value for chemical oxygen demand of 120 mg/L established
3 by EPA. For example, on December 7, 2007, the level of chemical oxygen demand
4 measured by Defendant in the Facility's discharged storm water was 270 mg/L. That level
5 of aluminum is over twice the benchmark value for aluminum established by EPA. The
6 Facility also measured levels of aluminum in storm water discharged from the Facility in
7 excess of EPA's benchmark value of 120 mg/L on January 4, 2008.

8 55. The electrical conductance levels detected by the Facility in its storm water
9 have been greater than the benchmark value of 200 μ mho/cm proposed by the State Board.
10 For example, on December 20, 2007, the electrical conductance level measured by
11 Defendant in the Facility's discharged storm water was 682 μ mho/cm. That electrical
12 conductance level is over three times the State Board's proposed benchmark value. The
13 Facility also has measured levels of electrical conductance in storm water discharged from
14 the Facility in excess of the proposed benchmark value of 200 μ mho/cm on February 1,
15 2008; January 28, 2008; January 4, 2008; December 18, 2007; December 7, 2007; February
16 22, 2007; February 8, 2007; December 12, 2006; February 27, 2006; December 1, 2005;
17 January 26, 2005; December 27, 2004; and December 8, 2004.

18 56. On information and belief, Plaintiffs allege that since at least December 8,
19 2004, Defendant has failed to implement BAT and BCT at the Facility for its discharges of
20 total suspended solids, zinc, N+N, iron, aluminum, lead, copper, chemical oxygen demand,
21 electrical conductance, and other pollutants. Section B(3) of the General Permit requires that
22 Defendant implement BAT for toxic and nonconventional pollutants and BCT for
23 conventional pollutants by no later than October 1, 1992. As of the date of this Complaint,
24 Defendant has failed to implement BAT and BCT.

25 57. On information and belief, Plaintiffs allege that since at least October 1, 2004,
26 Defendant has failed to implement an adequate Storm Water Pollution Prevention Plan for
27 the Facility. Plaintiffs are informed and believe, and thereupon allege, that the SWPPP
28 prepared for the Facility does not set forth site-specific best management practices for the

1 Facility that are consistent with BAT or BCT for the Facility. Plaintiffs are informed and
2 believes, and thereupon allege, that the SWPPP prepared for the Facility does not include an
3 adequate assessment of potential pollutant sources, structural pollutant control measures
4 employed by the Defendant, a list of actual and potential areas of pollutant contact, or an
5 adequate description of best management practices to be implemented at the Facility to
6 reduce pollutant discharges. According to information available to CSPA and River Watch,
7 Defendant's SWPPP has not been evaluated to ensure its effectiveness and revised where
8 necessary to further reduce pollutant discharges. Plaintiffs are informed and believe, and
9 thereupon allege, that the SWPPP does not include each of the mandatory elements required
10 by Section A of the General Permit.

11 58. Information available to CSPA and River Watch indicates that as a result of
12 these practices, storm water containing excessive pollutants is being discharged during rain
13 events from the Facility directly to either Blue Rock Springs Creek or Sulphur Springs
14 Creek. Sulphur Springs Creek flows into Lake Herman, which then flows into Suisun Bay.
15 Blue Rock Springs Creek flows into Lake Chabot, which then flows into the Napa River.

16 59. On information and belief, Plaintiffs allege that Defendants have failed to
17 analyze its storm water samples for iron as required by Table D of the General Permit since
18 on at least the following dates: January 26, 2005; December 27, 2004; and December 4,
19 2004.

20 60. Plaintiffs are informed and believe, and thereupon allege, that, Defendant has
21 failed and continues to fail to alter the Facility's SWPPP and site-specific BMPs consistent
22 with Section A(9) of the General Permit.

23 61. Plaintiffs are informed and believe that Defendant failed to submit to the
24 Regional Board a true and complete annual report certifying compliance with the General
25 Permit since at least July 1, 2005. Pursuant to Sections A(9)(d), B(14), and C(9), (10) of the
26 General Permit, Defendant must submit an annual report, that is signed and certified by the
27 appropriate corporate officer, outlining the Facility's storm water controls and certifying
28 compliance with the General Permit. Plaintiffs are informed and believe, and thereupon

1 allege, that Defendant has signed incomplete annual reports that purported to comply with
2 the General Permit when there was significant noncompliance at the Facility.

3 62. Information available to Plaintiffs indicates that Defendant has not fulfilled the
4 requirements set forth in the General Permit for discharges from the Facility due to the
5 continued discharge of contaminated storm water. Plaintiffs are informed and believe, and
6 thereupon allege, that all of the violations alleged in this Complaint are ongoing and
7 continuing.

8 **VI. CLAIMS FOR RELIEF**

9 **FIRST CAUSE OF ACTION**

10 **Failure to Implement the Best Available and
Best Conventional Treatment Technologies
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

11 63. Plaintiffs re-allege and incorporate Paragraphs 1-62, as if fully set forth herein.

12 64. The General Permit's SWPPP requirements and Effluent Limitation B(3)
13 require dischargers to reduce or prevent pollutants in their storm water discharges through
14 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional
15 pollutants. Defendant has failed to implement BAT and BCT at the Facility for its
16 discharges of suspended solids, zinc, N+N, iron, aluminum, lead, copper, chemical oxygen
17 demand, electrical conductance, and other un-monitored pollutants in violation of Effluent
18 Limitation B(3) of the General Permit.

19 65. Each day since October 1, 2004, that Defendant has failed to develop and
20 implement BAT and BCT in violation of the General Permit is a separate and distinct violation
21 of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

22 66. Defendant has been in violation of the BAT/BCT requirements every day since
23 October 1, 2004. Defendant continues to be in violation of the BAT/BCT requirements each
24 day that it fails to develop and fully implement an adequate BAT/BCT for the Facility.

25 **SECOND CAUSE OF ACTION**

26 **Discharges of Contaminated Storm Water
in Violation of Permit Conditions and the Act
(Violations of 33 U.S.C. §§ 1311(a), 1342)**

27 67. Plaintiffs re-allege and incorporate Paragraphs 1-66, inclusive, as if fully set
28

1 forth herein.

2 68. Discharge Prohibition A(2) of the General Permit requires that storm water
3 discharges and authorized non-storm water discharges shall not cause or threaten to cause
4 pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the
5 General Permit require that storm water discharges and authorized non-storm water discharges
6 shall not adversely impact human health or the environment, and shall not cause or contribute
7 to a violation of any water quality standards contained in a Statewide Water Quality Control
8 Plan or the applicable Regional Board's Basin Plan.

9 69. Plaintiffs are informed and believe, and thereupon allege, that since at least
10 October 1, 2004, Defendant has been discharging polluted storm water from the Facility in
11 excess of applicable water quality standards in violation of the Discharge Prohibition A(2) of
12 the General Permit.

13 70. During every rain event, storm water flows freely over exposed materials, waste
14 products, and other accumulated pollutants at the Facility, becoming contaminated with
15 suspended solids, zinc, N+N, iron, aluminum, lead, copper, chemical oxygen demand,
16 electrical conductance, and other un-monitored pollutants at levels above applicable water
17 quality standards. The storm water then flows untreated from the Facility into either Blue
18 Rock Springs Creek or Sulphur Springs Creek. Sulphur Springs Creek flows into Lake
19 Herman, which then flows into Suisun Bay. Blue Rock Springs Creek flows into Lake
20 Chabot, which then flows into the Napa River.

21 71. Plaintiffs are informed and believe, and thereupon allege, that these discharges
22 of contaminated storm water are causing or contributing to the violation of the applicable water
23 quality standards in a Statewide Water Quality Control Plan and/or the applicable Regional
24 Board's Basin Plan in violation of Receiving Water Limitation C(2) of the General Permit.

25 72. Plaintiffs are informed and believe, and thereupon allege, that these discharges
26 of contaminated storm water are adversely affecting human health and the environment in
27 violation of Receiving Water Limitation C(1) of the General Permit.

28 73. Every day since at least October 1, 2004, that Defendant has discharged and

1 continues to discharge polluted storm water from the Facility in violation of the General Permit
2 is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These
3 violations are ongoing and continuous.

4 **THIRD CAUSE OF ACTION**

5 **Failure to Prepare, Implement, Review, and Update**
6 **an Adequate Storm Water Pollution Prevention Plan**
7 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

8 74. Plaintiffs re-allege and incorporate Paragraphs 1-73, as if fully set forth herein.

9 75. Section A and Provision E of the General Permit requires dischargers of storm
10 water associated with industrial activity to develop and implement an adequate SWPPP no
11 later than October 1, 1992.

12 76. Defendant has failed to develop and implement an adequate SWPPP for the
13 Facility. Defendant's ongoing failure to develop and implement an adequate SWPPP for the
14 Facility is evidenced by, *inter alia*, Defendant's outdoor storage of various materials without
15 appropriate best management practices; the continued exposure of significant quantities of
16 various materials to storm water flows; the continued exposure and tracking of waste resulting
17 from the operation or maintenance of vehicles at the site, including trucks and forklifts; the
18 failure to either treat storm water prior to discharge or to implement effective containment
19 practices; and the continued discharge of storm water pollutants from the Facility at levels in
20 excess of EPA benchmark values.

21 77. Defendant has failed to update the Facility's SWPPP in response to the
22 analytical results of the Facility's storm water monitoring.

23 78. Each day since October 1, 2004, that Defendant has failed to develop, implement
24 and update an adequate SWPPP for the Facility is a separate and distinct violation of the
25 General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

26 79. Defendant has been in violation of the SWPPP requirements every day since
27 October 1, 2004. Defendant continues to be in violation of the SWPPP requirements each day
28 that it fails to develop and fully implement an adequate SWPPP for the Facility.

FOURTH CAUSE OF ACTION

Failure to Develop and Implement an Adequate Monitoring and Reporting Program

(Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

80. Plaintiffs re-allege and incorporate Paragraphs 1-79, inclusive, as if fully set forth herein.

81. Section B of the General Permit requires dischargers of storm water associated with industrial activity to have developed and be implementing a monitoring and reporting program (including, *inter alia*, sampling and analysis of discharges) no later than October 1, 1992.

82. Defendant has failed to develop and implement an adequate monitoring and reporting program for the Facility. Defendant's ongoing failure to develop and implement an adequate monitoring and reporting program are evidenced by, *inter alia*, their failure to analyze storm water samples for iron as well as their data obtained from the monitoring program, which represents violations of Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit, and that Plaintiffs allege is not representative of the quality of the Facility's storm water discharges

83. Each day since October 1, 2004, that Defendant has failed to develop and implement an adequate monitoring and reporting program for the Facility in violation of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). The absence of requisite monitoring and analytical results are ongoing and continuous violations of the Act.

FIFTH CAUSE OF ACTION

**False Certification of Compliance in Annual Report
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

84. Plaintiffs re-allege and incorporate Paragraphs 1-83, as if fully set forth herein.

85. Defendant has falsely certified compliance with the General Permit in each of the annual reports submitted to the Regional Board since at least July 1, 2005.

86. Each day since at least July 1, 2005 that Defendant has falsely certified compliance with the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendant continues to be in violation of the General Permit's certification requirement each day that it maintains its false certification

1 of its compliance with the General Permit.

2 **VII. RELIEF REQUESTED**

3 Wherefore, Plaintiffs respectfully request that this Court grant the following relief:

- 4 a. Declare Defendant to have violated and to be in violation of the Act as
5 alleged herein;
- 6 b. Enjoin Defendant from discharging polluted storm water from the Facility
7 unless authorized by the Permit;
- 8 c. Enjoin Defendant from further violating the substantive and procedural
9 requirements of the Permit;
- 10 d. Order Defendant to immediately implement storm water pollution control
11 and treatment technologies and measures that are equivalent to BAT or BCT and prevent
12 pollutants in the Facility's storm water from contributing to violations of any water quality
13 standards;
- 14 e. Order Defendant to comply with the Permit's monitoring and reporting
15 requirements, including ordering supplemental monitoring to compensate for past monitoring
16 violations;
- 17 f. Order Defendant to prepare a SWPPP consistent with the Permit's
18 requirements and implement procedures to regularly review and update the SWPPP;
- 19 g. Order Defendant to provide Plaintiffs with reports documenting the quality
20 and quantity of their discharges to waters of the United States and their efforts to comply with
21 the Act and the Court's orders;
- 22 h. Order Defendant to pay civil penalties of \$32,500 per day per violation for
23 all violations occurring through January 12, 2009, and \$37,500 per day per violation for all
24 violations occurring after January 12, 2009, for each violation of the Act pursuant to Sections
25 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;
- 26 i. Order Defendant to take appropriate actions to restore the quality of waters
27 impaired or adversely affected by their activities;
- 28 j. Award Plaintiffs' costs (including reasonable investigative, attorney, witness,

compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

k. Award any such other and further relief as this Court may deem appropriate.

Dated: October 1, 2009

Respectfully submitted,

LOZEAU DRURY LLP

By: /s/ Douglas J. Chermak
Douglas J. Chermak
Attorneys for Plaintiffs
CALIFORNIA SPORTFISHING PROTECTION
ALLIANCE and
NORTHERN CALIFORNIA RIVER WATCH

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U.S. Department of Justice
Citizen Suit Coordinator
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